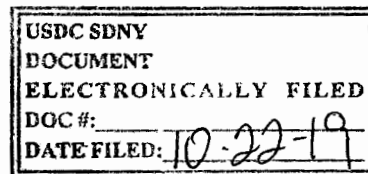


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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In re

CUSTOMS AND TAX ADMINISTRATION OF THE
KINGDOM OF DENMARK (SKAT) TAX REFUND
LITIGATION

18-md-2865 (LAK)

This paper applies to: 18-cv-05053 (LAK)
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PRETRIAL ORDER NO. 9

(ED&F Man's Motions to Dismiss and for Protective Order)

LEWIS A. KAPLAN, *District Judge*.

Third party defendant ED&F Man Capital Markets, Ltd. ("ED&F") has moved to dismiss the third party complaint of Goldstein Law Group PC 401(K) Profit Sharing Plan and Sheldon Goldstein (collectively, "Goldstein") and for a protective order staying Goldstein's outstanding document request unless and until personal jurisdiction is established over ED&F. Goldstein maintains that the third party complaint sufficiently alleges personal jurisdiction but argues in the alternative that it should be permitted to amend in order better to do so.

There seems little point to deciding the present motion to dismiss given the possibility that such a decision would simply trigger a motion for leave to amend and, in all probability, then a new pleading and a new motion to dismiss.

In the circumstances, ED&F's motion to dismiss [18-md-2865 Dkt 169, 18-cv-5053 Dkt. 74] is granted without prejudice to Goldstein's position and purely as a matter of efficiency and administrative convenience. *See* Fed. R. Civ. P. 1. Goldstein's alternative motion for leave to amend their third party complaint is granted. Any such amended complaint shall be filed no later than November 5, 2019. ED&F's motion for a protective order [18-md-2865 Dkt. 208, 18-cv-5053 Dkt. 90] is granted to the extent that ED&F need not respond to Goldstein's outstanding document request until 10 days after the Court's ruling on any motion by ED&F to dismiss the amended third party complaint or such other date as the Court may fix. It is denied in all other respects.

SO ORDERED.

Dated: October 22, 2019

A handwritten signature of Lewis A. Kaplan in black ink.

Lewis A. Kaplan
United States District Judge